

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

JOSEPH RUPPERT, as Trustee of and on behalf of	)	
FAIRMOUNT PARK, INC. RETIREMENT	)	
SAVINGS PLAN, and on behalf of all others	)	
similarly situated,	)	
	)	
Plaintiff,	)	No.: 4:07-CV-344-JAJ-TJS
	)	
vs.	)	
	)	
PRINCIPAL LIFE INSURANCE CO.,	)	
	)	
Defendant.	)	

**PLAINTIFF’S UNOPPOSED MOTION FOR  
LEAVE TO FILE SECOND AMENDED COMPLAINT**

COMES NOW Plaintiff Joseph Ruppert, as Trustee of and on behalf of the Fairmount Park, Inc. Retirement Savings Plan, pursuant to Federal Rule of Civil Procedure 15(a)(2) and for his motion to file a second amended complaint, states as follows:

1. On November 5, 2009, the Court entered an order granting Defendant’s motion for judgment on the pleadings with respect to Counts I and II of the First Amended Complaint.

2. On March 31, 2010, the Court entered an order granting Plaintiff’s motion for reconsideration of the November 5 order, with respect to Plaintiff’s claims regarding Defendant’s Foundation Options funds that were part of Counts I and II, based upon the Eighth Circuit’s November 25, 2009, decision in *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585 (8th Cir. 2009).

3. Because Counts I and II of the First Amended Complaint do not distinguish between Defendant’s Foundation Options funds and other mutual funds (*i.e.*, Access

Funds), Plaintiff proposes to amend his First Amended Complaint solely for the administrative housekeeping purpose of making his claims regarding the Foundation Options funds distinct and separate counts (counts III and IV of the proposed Second Amended Complaint) and conforming the pleadings to the Court's November 5, 2009, and March 31, 2010, rulings.

4. Plaintiff stipulates that the Court's November 5 rulings with respect to the Access Funds would apply to the two new Access funds counts (counts I and II of the proposed Second Amended Complaint) and that the current briefing on Defendant's pending motion for summary judgment should apply to the new "float" count (count V of the proposed Second Amended Complaint).

5. Plaintiff also stipulates that the proposed amendments shall have no effect on the Court's August 2008 class certification ruling or on the Court's March 31, 2010, rulings regarding discovery and class certification in the order sustaining Defendant's objections to the Magistrate Judge's April 2009 order. Plaintiff further stipulates that the amendments shall have no effect on the scope of any remaining discovery in this case, nor shall they be used in any way to seek certification of a class that would not have been appropriate under the prior version of the complaint.

6. Defendant will not be unfairly prejudiced by the proposed amendments and, in fact, Defendant's attorney, Mr. Eric Mattson, has advised Plaintiff's counsel in writing (by e-mail) that Defendant has no objection to the proposed amendment, subject to the stipulations described in paragraph 4 and 5, above.

WHEREFORE Plaintiff requests leave of Court to file his proposed Second Amended Complaint.

Respectfully submitted,

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*Attorneys for Plaintiff Joseph Ruppert  
and the Fairmount Park, Inc. Retirement  
Savings Plan*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 21, 2010, I filed this instrument electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing(s) to the following:

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